



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: MARCH 27, 2023

IN THE MATTER OF:

Appeal Board No. 627322

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination ruling the claimant not entitled to receive benefits, effective October 25, 2021, on the basis that the claimant was unable to file a valid original claim pursuant to Labor Law § 527 using either the basic base period or alternate base period because

the claimant was not paid at least \$2,700 in one calendar quarter during the base period. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the Commissioner of Labor. By decision filed December 30, 2022 (A.L.J. Case No.), the Administrative Law Judge overruled the initial determination.

The Commissioner of Labor appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the claimant and the Commissioner of Labor.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant filed a new claim for benefits on October 31, 2021, effective October 25, 2021, establishing a basic base period of the third quarter of 2020 through the second quarter of 2021 (July 1,

2020 through June 30, 2021) and an alternate base period of the fourth quarter of 2020 through the third quarter of 2021 (October 1, 2020 through September

30, 2021).

In the 3rd quarter of 2020, the claimant had earnings of \$220.00 from Top Shelf Staffing.

In the 4th quarter of 2020, the claimant had earnings of \$875.75: \$774.50 from GEP Cencast and \$101.25 from GEP Cenex.

In the 1st quarter of 2021, the claimant had earnings of \$712.50: \$427.50 from Elevate Entertainment Payroll; \$225 from Entertainment Casting; and \$60.00 from Sessions Payroll.

In the 2nd quarter of 2021, the claimant had earnings of \$2,341.75: \$155.00 from GEP Cenex; \$897.00 from Elevate Entertainment Payroll; \$751.25 from Media Services Payroll; and \$538.50 from Sessions Payroll.

In the 3rd quarter of 2021, the claimant had earnings of \$1,166.25 from Top Shelf Staffing

The monetary determination in this matter was mailed to the claimant on May 16, 2023. On May 27, 2022, the claimant requested a hearing regarding the monetary determination and contended that the Department of Labor never investigated earnings that the claimant had from gardening jobs he performed for an individual, AS.

On August 22, 2022, the Department of Labor mailed a questionnaire to the claimant regarding additional employment and earnings that the claimant contended he had during the basic and alternate base periods. The claimant completed the questionnaire on August 30, 2022.

On November 2, 2022, the Department of Labor sent a secure message to the claimant with additional questions regarding the contended employment with AS. The secure message indicated that if the claimant did not respond by the close of business on November 4, 2022, a determination would be made with the information on file. A monetary determination was mailed to the claimant on November 18, 2022, indicating that base period employment with AS could not be used to establish entitlement pursuant to Section 511 of the New York State Unemployment Insurance Law because it was determined that the claimant was not an employee of AS, as the claimant did not respond to additional requests for information regarding the nature of the contended employment.

On December 24, 2022, the claimant submitted a request for reconsideration contending that in the second quarter of 2021 he had earned \$1,114.69 from AS and \$50.00 from another individual, SIR.

At the telephone conference hearing held on December 29, 2022, the Commissioner of Labor representative indicated that the determination issued on November 18, 2022 had been withdrawn.

OPINION: The credible evidence fails to establish that the claimant did not have earnings of at least \$2,700 in a single quarter during either the basic base period or the alternate base period. We reject the claimant's contention that he had additional earnings from Arthur Spears. In this regard, the claimant has produced no documentation to support this contention. Although the claimant was noticed to produce all proof of employment, including tax returns with attachments, as well as paystubs for 2020 and 2021, the claimant failed to produce any documentation to support his contention that he had additional wages from employment. This case is similar to Appeal Board No. 614240 in which the Department of Labor had not considered certain earned remuneration when determining whether the claimant was able to file a valid original claim. In that case, the Board As of May 16, 2022, when the monetary determination had been issued, the Department of Labor did not have notice that the claimant contended there was additional employment which had not been considered. Although there had been a monetary determination issued in November 2022 which referenced this employment, such determination had been withdrawn and is not the subject of the matter before us. Absent documentation supporting the claimant's contention of additional employment, the claimant has not established that he had

earnings of at least \$2,700 in any one calendar quarter as required in order to file a valid original claim.

The matter is referred back to the Department of Labor for investigation and determination as to whether additional remuneration earned by the claimant, including, but not limited to, services performed for Arthur Spears, makes the claimant eligible to file a valid original claim.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, ruling the claimant not entitled to receive

benefits, effective October 25, 2021, on the basis that the claimant was unable to file a valid original claim pursuant to Labor Law § 527 using either

the basic base period or alternate base period because the claimant was not paid at least \$2,700 in one calendar quarter during the base period, is sustained.

The matter is referred back to the Department of Labor for investigation and determination as to whether additional remuneration earned by the claimant, including, but not limited to, services performed for Arthur Spears, makes the claimant eligible to file a valid original claim.

The claimant is denied benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER